

4-17-2015

Harper v. Idaho Dept. of Labor Clerk's Record v. 1 Dckt. 42864

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BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

EISMANN

BETTY S. HARPER,
SSN: [REDACTED]

Claimant,

v.

PHED INVESTMENTS, LTD. D/B/A
SILVERSTONE INN AND SUITES,

Employer,

and

IDAHO DEPARTMENT OF LABOR,

Respondent.

SUPREME COURT NO. 42864

AGENCY RECORD

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

For Claimant/Appellant

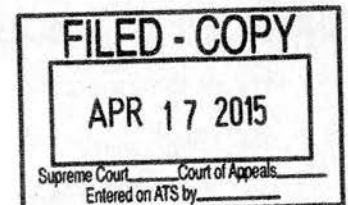
BETTY S HARPER
3689 W CHUCKAR LOOP APT 202
POST FALLS ID 83854-9337

For Employer/Respondent

PHED INVESTMENTS LTD
DBA SILVERSTONE INN AND SUITES
3647 W 5TH AVE
POST FALLS ID 83854

For Respondent

TRACEY K ROLFSEN
DEPUTY ATTORNEY GENERAL
317 W MAIN STREET
BOISE ID 83735



AGENCY RECORD – BETTY S. HARPER

COPY

42864

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

BETTY S. HARPER,
SSN: 444-48-0055,

Claimant,

v.

PHED INVESTMENTS, LTD. D/B/A
SILVERSTONE INN AND SUITES,

Employer,

and

IDAHO DEPARTMENT OF LABOR,

Respondent.

SUPREME COURT NO. 42864

AGENCY RECORD

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

For Claimant/Appellant

BETTY S HARPER
3689 W CHUCKAR LOOP APT 202
POST FALLS ID 83854-9337

For Employer/Respondent

PHED INVESTMENTS LTD
DBA SILVERSTONE INN AND SUITES
3647 W 5TH AVE
POST FALLS ID 83854

For Respondent

TRACEY K ROLFSEN
DEPUTY ATTORNEY GENERAL
317 W MAIN STREET
BOISE ID 83735

AGENCY RECORD – BETTY S. HARPER

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LIST OF EXHIBITS

HEARING TRANSCRIPT taken on 08/08/14 will be lodged with the Supreme Court.

EXHIBITS ADMITTED into record before IDAHO DEPARTMENT OF LABOR

.....Notice of Telephone Hearing, mailed July 30, 2014 (pp. 1 - 3)

Exhibit:

.....Important Information About Your Hearing Read Carefully (pp. 1 - 2)

.....Idaho Department of Labor Issue Script (pp. 3 - 8) (p. 8 is blank)

.....Employee Warning Notice, dated 05/09/2014 (p. 9)

.....Employee Warning Notice, dated 06/09/2014 (p. 10)

.....Employer's Batch Settlement Detail (pp. 11 - 12)

.....IDOL Eligibility Determination Unemployment Insurance Claim (pp. 13 - 14)

.....Claimant's Correspondence , dated 07/24/14 (pp. 15 – 16)

.....IDOL Eligibility Determination Unemployment Insurance Claim (p. 17)

.....IDOL Employers Data (p. 18)

APPEALS BUREAU
IDAHO DEPARTMENT OF LABOR
317 WEST MAIN STREET / BOISE, IDAHO 83735-0720
(208) 332-3572 / (800) 621-4938
FAX: (208) 334-6440

BETTY S. HARPER,
SSN: [REDACTED] Claimant

vs.

PHED INVESTMENTS LTD DBA
SILVERSTONE INN AND SUITES,
Employer
and

IDAHO DEPARTMENT OF LABOR

DOCKET NUMBER 5886-2014

DECISION OF APPEALS EXAMINER

DECISION

Benefits are **ALLOWED** effective June 8, 2014. The claimant was discharged but not for misconduct in connection with employment, as defined by § 72-1366(5) of the Idaho Employment Security Law.

The employer's account **IS HELD CHARGEABLE** for experience rating purposes, in accordance with § 72-1351(2)(a) of the Idaho Employment Security Law.

The Eligibility Determination dated July 22, 2014 is hereby **REVERSED**.

HISTORY OF THE CASE

The above-entitled matter was heard by Judge Little, Appeals Examiner for the Idaho Department of Labor, on Friday, August 8, 2014, by telephone in the City of Boise, in accordance with § 72-1368(6) of the Idaho Employment Security Law.

The claimant, Betty S. Harper, appeared for the hearing and presented testimony. The claimant was represented by Linda Hulsey.

The employer, Phed Investments LTD dba Silverstone Inn and Suites, appeared for the hearing and Frederick Schoner and Katherine Hastings presented testimony.

The Notice of Telephone Hearing and pages #1 through #18 of the Exhibits were entered into and made a part of the record.

ISSUES

The issues before the Appeals Examiner are (1) whether the claimant quit voluntarily and, if so, whether with good cause connected with the employment -OR- was discharged and, if so, whether for misconduct in connection with the employment, according to §72-1366(5) of the

Idaho Employment Security Law; and (2) whether the employer's account is properly chargeable for experience rating purposes for benefits paid to the claimant, in accordance with §72-1351(2)(a) of the Idaho Employment Security Law.

FINDINGS OF FACT

Additional facts or testimony may exist in this case. However, the Appeals Examiner outlines only those that are relevant to the decision and those based upon reliable evidence. Based on the exhibits and testimony in the record, the following facts are found:

1. The claimant has worked for this same establishment for more than 10 years. Phed Investments purchased the business in February 2013.
2. The claimant worked for this employer as a night auditor from February 2013 until June 9, 2014. In the first four of the five calendar quarters preceding the one in which the claimant applied for benefits, this employer paid the claimant more wages than did any other employer.
3. The employer maintains that the claimant's performance steadily declined. The employer verbally counseled the claimant about concerns that it had with the claimant's performance. The employer found that the basic duties of the job were not being completed during the claimant's shifts, and that the claimant had frequent errors in her night batches or she would not perform the night batches. Further, the claimant refused a direct order from a supervisor in getting supplies from the office in order to stock the kitchen.
4. As a result of performance concerns, the employer reduced the claimant from fulltime to three days a week, and eventually it reduced the claimant's schedule to 16 hours a week.
5. On May 9, 2014, the employer provided the claimant with a written warning when she failed to inspect a room prior to reimbursing the guest's \$100 cash deposit, and the room was in poor condition. The claimant agrees that she should have checked the room before refunding the deposit.
6. The employer received complaints from guests that the claimant was not at her desk, and that she was sleeping on the job. On or about June 6, 2014, the operations manager, Ms. Hastings, reviewed the surveillance video. Ms. Hasting observed that the claimant was away from the front desk for a significant period of time, she observed the claimant watching TV in the breakfast area, she observed the claimant's family and friends at the worksite visiting with the claimant, and she observed the claimant sleeping on the job. The employer discharged the claimant on June 9, 2014, for these reasons.
7. The claimant maintains that over the course of the last month or two, things with the claimant's employment changed and the employer was counseling the claimant about performance issues, as well as reducing her hours. After the new ownership, the employer would implement a procedure, and then change the procedure later. The claimant was not always immediately made aware of these changes. The claimant is aware that she made a few errors when the employer implemented a new reservation and credit card system in February 2014, as there were issues with the system initially. As well, the claimant experienced issues when the password on the system was changed and she was not notified of the new password. This may have caused some issues with her

night batches, but outside of this, the employer did not identify specific errors that she made on the night batches. Further, the claimant argues that she did not sleep on the job, and she left the front desk to perform security walks and stock the kitchen.

AUTHORITY

§ 72-1351(2)(a) of the Idaho Employment Security Law provides in part that for experience rating purposes, no charge shall be made to the account of such covered employer with respect to benefits paid to a worker who terminated his services voluntarily without good cause attributable to such covered employer, or who had been discharged for misconduct in connection with such services.

Section 72-1366(5) of the Idaho Employment Security Law provides that a claimant shall be eligible for benefits provided unemployment is not due to the fact that the claimant left employment voluntarily without good cause, or was discharged for misconduct in connection with employment.

IDAPA Regulation 09.01.30.275.01 through .03 provides that:

275. DISCHARGE. A claimant who has been discharged for misconduct in connection with his employment is ineligible. Ref. Sec. 72-1366(5), Idaho Code. (3-19-99)

01. Burden Of Proof. The burden of proving that a claimant was discharged for employment-related misconduct rests with the employer. (3-19-99)

02. Disqualifying Misconduct. Misconduct that disqualifies a claimant for benefits must be connected with the claimant's employment and involve one of the following: (3-19-99)

(a) Disregard of employer's interest. A willful, intentional disregard of the employer's interest. (3-19-99)

(b) Violation of reasonable rules. A deliberate violation of the employer's reasonable rules. (3-19-99)

(c) Disregard of standards of behavior. If the alleged misconduct involves a disregard of a standard of behavior which the employer has a right to expect of his employees, there is no requirement that the claimant's conduct be willful, intentional, or deliberate. The claimant's subjective state of mind is irrelevant. The test for misconduct in "standard of behavior cases" is as follows: (3-19-99)

(i) Whether the claimant's conduct fell below the standard of behavior expected by the employer; and (3-19-99)

(ii) Whether the employer's expectation was objectively reasonable in the particular case. (3-19-99)

03. Inability To Perform Or Ordinary Negligence. Mere inefficiency, unsatisfactory conduct, failure of good performance as the result of inability or incapacity, inadvertencies, isolated instances of ordinary negligence, or good faith errors in judgment or discretion are not considered misconduct connected with employment. (3-19-99)

Misconduct within the meaning of an unemployment compensation act excluding from its benefit an employee discharged for misconduct must be an act of wanton or willful disregard of the employer's interest, a deliberate violation of the employer's rules, a disregard of standards of behavior which the employer has the right to expect of his employee, or negligence in such degree or recurrence as to manifest culpability, wrongful intent, or evil design, or show an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to the employer. Rasmussen vs. Employment Security Agency, 83 Idaho 198, 360 P.2d 90 (1961).

Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or

incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed "misconduct" within the meaning of the statute. Carter vs. Employment Security Commission, 364 Mich. 538, 111 N.W.2d 817 (1961).

Whether an employee should have been warned, suspended or discharged for an offense is irrelevant for unemployment insurance purposes. The discipline appropriate in a particular case is wholly within the employer's discretion. The only issues to be decided are whether there was a discharge, and if so, whether the discharge was for misconduct within the meaning of the unemployment insurance law. Alder vs. Mountain States Telephone and Telegraph Co., 92 Idaho 506, 446 P.2d 628 (1968).

If a party has the burden of proof by a preponderance of the evidence and the evidence presented weighs evenly on both sides, the finder of fact must resolve the question against the party having the burden of proof. Atlantic and Pacific Insurance Company vs. Barnes, 666 P.2d 163 (1983).

An employer may discharge an employee for any reason. However, only a discharge that is found to constitute misconduct for unemployment insurance purposes makes an employee ineligible for benefits.


CONCLUSIONS

An employer may discharge an employee for any reason. However, for unemployment insurance purposes a claimant is found ineligible for benefits if it is determined that s/he was discharged for misconduct in connection with the employment by the preponderance of evidence. A "preponderance of the evidence" is evidence that, when weighed with that opposed to it, has more convincing force, and from which results a greater probability of truth. Misconduct is defined as a willful disregard of the employer's interests, rules and procedures, and engaging in behavior that falls below the standard the employer has a right to expect or negligence in such a degree as to manifest culpability, wrongful intent, or evil design. Therefore, the record, either through sworn first-hand testimony or authenticated documentation, must show that what occurred rose to the level of misconduct, or that the claimant was aware that its behavior, performance, or some other issue was a concern and yet the claimant continued to perform in a manner inconsistent with proper procedures, counselings, and warnings.

The employer verbally counseled the claimant about concerns that it had with the claimant's performance, and it warned the claimant in writing on one occasion about failing to check a room prior to refunding a customer for its room deposit. The employer discharged the claimant after reviewing its surveillance video and observed the claimant wasting time, sleeping on the job, and not performing the duties of her job. The claimant argues that she experienced issues with the employer's new system, and she attempted to keep abreast of the changing procedures as best as she could. Further, the claimant denies that she engaged in the acts purported on the final incident. Though it appears that the claimant was verbally counseled about performance issues, it is not clear that the employer specifically identified the errors or mistakes that the claimant allegedly made. Further, the employer wrote the claimant up after one incident. However, outside of the discharge paperwork, the record contains no other write-ups about the other issues that the employer addressed in the hearing, and the claimant disputes that she was made aware of specific mistakes or specific performance issues. Further, the claimant disputes the employer's testimony regarding what it observed on its surveillance video. Therefore, the employer has failed to meet its burden

of showing that the claimant engaged in the acts purported or that what occurred here with the claimant's employment rose to the level of misconduct that would preclude the receipt of unemployment insurance benefits.

The Appeals Examiner concludes that the claimant was not discharged for employment-related misconduct. Therefore, the claimant is eligible for unemployment insurance benefits and the employer's experience rated account is held chargeable on the claim. The Eligibility Determination is hereby reversed.


Judge Little

Date of Mailing August 11, 2014 Last Day To Appeal August 25, 2014

APPEAL RIGHTS

You have FOURTEEN (14) DAYS FROM THE DATE OF MAILING to file a written appeal with the Idaho Industrial Commission. The appeal must be mailed to:

Idaho Industrial Commission
Judicial Division, IDOL Appeals
P.O. Box 83720
Boise, Idaho 83720-0041

Or delivered in person to:

Idaho Industrial Commission
700 S Clearwater Lane
Boise, ID 83712

Or transmitted by facsimile to:

(208) 332-7558.

If the appeal is mailed, it must be postmarked no later than the last day to appeal. An appeal filed by facsimile transmission must be received by the Commission by 5:00 p.m., Mountain Time, on the last day to appeal. A facsimile transmission received after 5:00 p.m. will be deemed received by the Commission on the next business day. A late appeal will be dismissed. Appeals filed by any means with the Appeals Bureau or a Department of Labor local office will not be accepted by the Commission. ***TO EMPLOYERS WHO ARE INCORPORATED:*** *If you file an appeal with the Idaho Industrial Commission, the appeal must be signed by a corporate officer or legal counsel licensed to practice in the State of Idaho and the signature must include the individual's title. The Commission will not consider appeals submitted by employer representatives who are not attorneys. If you request a hearing before the Commission or permission to file a legal brief, you must make these requests through legal counsel licensed to practice in the State of Idaho. Questions should be directed to the Idaho Industrial Commission, Unemployment Appeals, (208) 334-6024.*

If no appeal is filed, this decision will become final and cannot be changed. **TO CLAIMANT:** If this decision is changed, any benefits paid will be subject to repayment. If an appeal is filed, you should continue to report on your claim as long as you are unemployed.

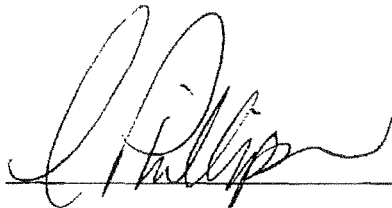
APPEALS BUREAU
IDAHO DEPARTMENT OF LABOR
317 WEST MAIN STREET / BOISE, IDAHO 83735-0720
(208) 332-3572 / (800) 621-4938
FAX: (208) 334-6440

CERTIFICATE OF SERVICE

I hereby certify that on August 11, 2014, a true and correct copy of **Decision of Appeals Examiner** was served by regular United States mail upon each of the following:

BETTY S HARPER
3689 W CHUKAR LOOP APT 202
POST FALLS ID 838549337

PHED INVESTMENTS LTD
DBA SILVERSTONE INN AND SUITES
3647 W 5TH AVE
POST FALLS ID 83854



The request failed with HTTP status 401: Unauthorized.

Quick Load

Docket Number: Year: 2014 Higher Court: Appeal Source: UI - Basls Load

Appeal Information

Docket Number: 5886 **Year:** 2014 **SSN:** **Name:** HARPER, BETTY S [Edit](#)

Court Level: Appeal **Date Filed:** 07/25/2014 **Due Out Date:** 08/22/2014

Appellant: Claimant **Program:** REG - UI **Related To Docket:**

Status: Scheduled **Local Office:** 0090 - Kootenai County Job Service

Multiple Appeals: ☒ **Tax Due:** \$0.00 **Penalty:** \$0.00 **Interest:** \$0.00

Tax Rep Name:

Setup By: egloeckl **Setup Date:** 07/28/2014

Scheduled By: slittle **Scheduled Set On:** 08/08/2014

Participants

Type	Name	Address	City	State	Zip	Phone	Fax Phone
Claimant	HARPER, BETTY S	3689 W Chukar Loop Apt 202	POST FALLS	ID	838549337	(208) 704-8224	
Employer	PHED INVESTMENTS LTD DBA SILVERSTONE INN AND SUITES	3647 W 5TH AVE	POST FALLS	ID	83854		

Issues

Issue ID	Level	Sequence	Primary	Issue	Status	Determination	Decision	Resolution
020		0	Primary	Discharge	Allow	Allow	Reversed	020
021		0		Chargeability	Chargeable	Chargeable	Reversed	021

Schedule Information

Examiner	Date	Start	End	MeetingID	Status
Stephanie Little	Aug 8, 2014	10:00 AM	11:00 AM	38672	Past

Notes

Note	UpdatedBy	LastUpdated
CL called to say she was on hold and the message said the hearing had been canceled or rescheduled. I checked with AE and hearing is still scheduled. I asked the CL to call back.	DOE\mshields	8/8/2014 10:07:05 AM
Frederick from ER called to ask about appeal to IC. gave him IC ph#	DOE\gregory	8/13/2014 3:40:41 PM
IC Protest received; processed as needed.	DOE\egloeckl	8/22/2014 1:49:08 PM

Documents

Add Document NTH Dismissal Select a Document to Build... Ones AX UI Tasks

PHED Investments LTD
DBA SilverStone Inn and Suites
3647 W 5th Ave
Post Falls, Idaho 83854
August 19, 2014

Idaho Industrial Commission
Judicial Division, IDOL Appeals
PO Box 83720
Boise, Idaho 83720-0041

RE: Docket 5886-2014 Betty Harper Employer Appeal

Appeals Bureau,

PHED Investments LTD is appealing the decision of Judge Little, Appeals Examiner. Betty Harper was fired for disqualifying misconduct and disregarded the standard of behavior which PHED Investment LTD expected from an employee.

Ms. Harpers misconduct, testimony from Friday August 08, 2014:

- Sleeping on the job, reported to us by a Guest and verified on camera by Mrs. Hastings.
- Willful disregard for job duties, not sending credit cards to bank then refusing to call for help with our 24hr training/support CloudPM 602-870-4200 when instructed by management.
- Insubordination of an order to enter the office by her superior to get supplies. Absolutely refused to perform the task.
- Written up on 5-9-14 for willful disregard of hotel policies of cash deposit return resulting in hundreds of dollars in damages.
- Three Verbal meetings at the hotel between 5-10-14- 6-8-14 with Mrs. Harper and manager to discuss why she was not performing her job duties and her disregard of employers interest.
- Written up on 6-9-14 for blatant disregard of job duties to include sleeping on the job, not settling credit cards, refusing direct orders from superior and deliberately not performing standard job duties.

In review of the testimony from August 08, 2014 Mrs. Harper demonstrated deliberate violation of employer's rules, a disregard of standards of behavior, substantial disregard of employer's interest and for these reasons we request that her unemployment benefits be denied.

Sincerely,



Ed Raedcher
Corporate Officer
PHED Investments LTD

INDUSTRIAL COMMISSION

AUG 22 2014

FILED

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BETTY S. HARPER,
SSN: 444-48-0055,

Claimant,

v.

PHED INVESTMENTS, LTD. d/b/a
SILVERSTONE INN AND SUITES,

Employer,

and

IDAHO DEPARTMENT OF LABOR.

IDOL # 5886-2014

**NOTICE OF FILING
OF APPEAL**

FILED

AUG 26 2014

INDUSTRIAL COMMISSION

PLEASE TAKE NOTICE: The Industrial Commission has received an appeal from a decision of an Appeals Examiner of the Idaho Department of Labor. A copy of the appeal is enclosed, along with a copy of the Commission's Rules of Appellate Practice and Procedure.

PLEASE READ ALL THE RULES CAREFULLY

The Industrial Commission promptly processes all unemployment appeals in the order received. In the mean time, you may want to visit our web site for more information: www.iic.idaho.gov.

The Commission will make its decision in this appeal based on the record of the proceedings before the Appeals Examiner of the Idaho Department of Labor.

INDUSTRIAL COMMISSION
UNEMPLOYMENT APPEALS DIVISION
POST OFFICE BOX 83720
BOISE IDAHO 83720-0041
(208) 334-6024

Calls Received by the Industrial Commission May Be Recorded

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of August, 2014 a true and correct copy of the **Notice of Filing of Appeal and compact disc of the Hearing** were served by regular United States mail upon the following:

APPEAL:

DEPUTY ATTORNEY GENERAL
IDAHO DEPARTMENT OF LABOR
STATE HOUSE MAIL
317 W MAIN STREET
BOISE ID 83735

APPEAL AND DISC:

BETTY S HARPER
3689 W CHUCKAR LOOP APT 202
POST FALLS ID 83854-9337

PHED INVESTMENTS LTD
DBA SILVERSTONE INN AND SUITES
3647 W 5TH AVE
POST FALLS ID 83854

kh


Assistant Commission Secretary

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CRAIG G. BLEDSOE – ISB# 3431
TRACEY K. ROLFSEN – ISB# 4050
CHERYL GEORGE – ISB# 4213
Deputy Attorneys General
Idaho Department of Labor
317 W. Main Street
Boise, Idaho 83735
Telephone: (208) 332-3570

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BETTY S. HARPER,

Claimant,

vs.

PHED INVESTMENTS LTD DBA
SILVERSTONE INN AND SUITES,

Employer,

and

IDAHO DEPARTMENT OF LABOR.

IDOL NO. 5886-2014

NOTICE OF APPEARANCE

FILED


SEP 08 2014

INDUSTRIAL COMMISSION

TO THE ABOVE-NAMED PARTIES:

Please be advised that the undersigned Deputy Attorney General representing the Idaho Department of Labor hereby enters the appearance of said attorneys as the attorneys of record for the State of Idaho, Department of Labor, in the above-entitled proceeding. By statute, the Department of Labor is a party to all unemployment insurance appeals in Idaho.

DATED this 3rd day of September, 2014.


Tracey K. Rolfsen
Deputy Attorney General
Attorney for the State of Idaho,
Department of Labor

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a copy of the foregoing NOTICE OF APPEARANCE, was mailed, postage prepaid, this 3rd day of September, 2014 to:

BETTY S. HARPER
3689 W CHUCKAR LOOP APT 202
POST FALLS ID 83854-9337

PHED INVESTMENTS LTD
DBA SILVERSTONE INN AND SUITES
3647 W 5TH AVE
POST FALLS ID 83854


Karen Rash

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BETTY S. HARPER,
SSN: 444-48-0055,

Claimant,

v.

PHED INVESTMENTS, LTD. D/B/A
SILVERSTONE INN AND SUITES,

Employer,

and

IDAHO DEPARTMENT OF LABOR.

IDOL #5886-2014

DECISION AND ORDER

FILED

DEC 11 2014

INDUSTRIAL COMMISSION

Appeal of a Decision issued by an Appeals Examiner with the Idaho Department of Labor ruling Claimant eligible for unemployment benefits. REVERSED.

Employer, Phed Investments, Ltd. d/b/a Silverstone Inn and Suites, appeals to the Industrial Commission a Decision issued by the Idaho Department of Labor ("Department") ruling Claimant, Betty S. Harper, eligible for unemployment insurance benefits. The Department's Appeals Examiner concluded that: 1) Employer discharged Claimant for reasons other than misconduct connected with employment; and 2) Employer's account is chargeable for experience rating purposes.

None of the interested parties has sought a new hearing before the Commission. Employer and Claimant both participated at the Appeals Examiner's hearing. There are no allegations of impropriety with respect to the conduct of that hearing or evidence of any irregularities. The parties have been provided with due process. There will be no additional hearing.

The undersigned Commissioners have performed a *de novo* review of the record, pursuant to Idaho Code § 72-1368(7). Spruell v. Allied Meadows Corp., 117 Idaho 277,

787 P.2d 263 (1990). The evidentiary record in this case contains the audio recording of the hearing the Appeals Examiner convened on August 8, 2014 and the exhibits made part of the record during that proceeding. Those exhibits consist of the Notice of Telephone Hearing and Exhibit: [pp. 1 through 18].

FINDINGS OF FACT

A preponderance of the evidence in the record establishes the following Findings of Fact:

1. Claimant was a night auditor for the same hotel property for over ten years. During that time, the property underwent several ownership and management changes, including a period in receivership. (Audio Recording.)
2. The most recent owner took over the property in February 2013. Frederick Schoner, who had been involved with the property as a consultant and as part of the receivership, became part of the management team under the new ownership. Employer also hired Katherine Hastings from another property to serve as operations manager. Hastings became Claimant's direct supervisor. (Audio Recording.)
3. Until early May 2014, Claimant worked 35 or more hours per week. As a night auditor, Claimant was responsible for a variety of duties, including reconciling the credit card batches from the day's business, accepting payment from customers as they checked in, inspecting rooms of customers checking out before refunding any deposit, conducting security checks, and ensuring that the coffee and breakfast area were prepared. (Audio Recording.)
4. In February 2014, Employer implemented a new computer-based system that handled reservations and credit card batches. Although each user could set up an individual password, Employer also used a "shared" password that changed about every 30 days. Claimant relied on the shared password.
5. On May 3, 2014, Claimant returned the deposit of a guest checking out without first inspecting the room. The guest had smoked in the room that the property had designated as a non-smoking room. Had Claimant inspected the room, she would not have returned the deposit. Claimant admitted the error when Schoner wrote up a warning notice on May 9, 2014. (Audio Recording, Exhibit: p. 9.)
6. Claimant's job performance declined. Schoner noticed errors in Claimant's work on the days he came in on the morning shift to relieve Claimant. He verbally counseled her and Claimant would acknowledge that she would do better. However, when her performance did not improve, Employer reduced Claimant's hours to three days and then two day per week. (Audio Recording.)

7. On the morning of Saturday, June 7, 2014, Claimant did not settle the credit cards as part of her auditor's duties. Claimant maintains that the password had changed without her knowledge. Therefore, after three failed attempts to access the system, the system locked her out. Claimant left a note for the next shift that she had been unable to settle the credit cards. (Audio Recording, Exhibit: pp. 11-12.)
8. Towards the end of her shift on the morning of June 7, 2014, Claimant noticed that there were no more coffee beans available to set up coffee for breakfast. Claimant asked Hastings about the coffee beans. Hastings directed Claimant to the supply in the office. Claimant refused to enter a "private office" to retrieve the coffee beans. (Audio Recording.)
9. Upon receiving a customer complaint that Claimant appeared to be sleeping on the job during her June 6 – June 7 shift, Hastings reviewed the surveillance video tapes for that shift. Hastings observed Claimant watching TV, spending significant time away from the desk, and apparently sleeping. (Audio Recording.)
10. Hastings discharged Claimant on June 9, 2014, for insubordination when Claimant refused to get the coffee beans and failure to perform her job duties. (Audio Recording, Exhibit: p. 10.)
11. Employer paid Claimant more wages than any other employer in the first four of the five calendar quarters preceding the quarter in which Claimant applied for unemployment benefits. (Exhibit: p. 18.)

DISCUSSION

Employer discharged Claimant for a variety of problems pertaining to her job performance. Claimant started with the hotel property in 1989 as a night auditor. Claimant was responsible for customer service, performing the audit, watching the property, and setting up the breakfast area. Although Claimant performed her duties without difficulty through many changes in management and ownership, Claimant's problems started in 2014, about a year after the current ownership took over. (Audio Recording.)

Beginning in February 2014, Employer implemented a new computer-based system for reservations and credit card batching. Users could set up their own user identification and passwords, but Claimant relied on the "shared" password. However, when the password

changed and Claimant did not get the update, Claimant was unable to access the system directly. (Audio Recording.) Claimant had demonstrated proficiency in accessing the system through the Internet when the direct access was not working. Other members of Employer's team worked through the problems with the new system, but Claimant appeared to have more difficulty than others did. (Audio Recording.)

Schoner noticed other evidence of decline in Claimant's job performance. Claimant was making errors that a seasoned auditor with Claimant's experience should not make. On May 3, 2014, Claimant returned the deposit of a guest checking out without first inspecting the room. The guest had smoked in the room that was designated as a non-smoking room. Claimant concedes that she should have inspected the room, but because the customer was a returning customer, she did not think it was necessary. (Audio Recording.) Claimant admitted the error when Schoner wrote up a warning notice on May 9, 2014. (Audio Recording, Exhibit: p. 9.) Schoner met with Claimant a few times to discuss her errors and job performance. Claimant had no explanation, but promised to do better. When Claimant did not improve, Schoner explained that he reduced her hours because he could not trust the quality of her work. (Audio Recording.)

The events resulting in Claimant's discharge occurred on her shift starting on the night of June 6, 2014. Claimant did not settle the credit cards as part of her auditor's duties. Claimant maintains that the password had changed without her knowledge. (Audio Recording.) After three failed attempts to use the last shared password she had, the system locked her out. Therefore, Claimant was unable to settle the credit card transactions. Claimant stated that she left a note for the next shift to explain that she had been unable to settle the credit cards. (Audio Recording, Exhibit: pp. 11-12.)

Towards the end of her shift, Claimant noticed that there were no coffee beans in the supply area to make coffee. When Claimant asked Hastings about the coffee beans, Hastings

told Claimant that there were coffee beans in the office and directed Claimant to go and get them. Claimant refused, stating that because she was under so much scrutiny about her job performance, she did not feel comfortable entering a private office. (Audio Recording.)

After Claimant left on June 7, 2014, Hastings received a customer complaint that Claimant had allegedly been sleeping on the job. Hastings reviewed the video and concluded that Claimant had been sleeping as well as watching television. These observations, along with Claimant's refusal to make the coffee and failure to reconcile the credit card transactions, prompted Hastings to discharge Claimant.

The Idaho Employment Security Law provides unemployment insurance benefits to claimants who become unemployed due to no failure of their own. In the case of a discharge, as was the cause for the separation here, the issue is whether the claimant committed some form of employment-related misconduct that would render him or her ineligible for unemployment benefits pursuant to Idaho Code § 72-1366(5). The burden of proving misconduct by a preponderance of the evidence falls strictly on the employer. Appeals Examiner of Idaho Dept. of Labor v. J.R. Simplot Co., 131 Idaho 318, 320, 955 P.2d 1097, 1099 (1998). If the discharging employer does not meet that burden, benefits must be awarded to the claimant. Roll v. City of Middleton, 105 Idaho 22, 25, 665 P.2d 721, 724 (1983); Parker v. St. Maries Plywood, 101 Idaho 415, 419, 614 P.2d 955, 959 (1980).

The Idaho Supreme Court has set out a three-prong definition of the term "misconduct" as it applies to a claimant's eligibility for unemployment benefits. "Misconduct" is established when the employer demonstrates that the claimant's discharge resulted from a willful, intentional disregard of the employer's interest; a deliberate violation of the employer's rules; or a disregard of standards of behavior which the employer has a right to expect of its employees. Kivalu v. Life Care Centers of America, 142 Idaho 262, 265, 127 P.3d 165, 167 (2005)(citing

Harris v. Electrical Wholesale, 141 Idaho 1, 5-6, 921 P.2d 178, 182-183 (2004)). Further, the employer's evidence must be weighed under each of the three grounds set out for establishing "misconduct." Smith v. Zero Defect, Inc., 123 Idaho 881, 884, 980 P.2d 545, 548 (1999).

There is no evidence of any written rules or policies in this record. To establish that an employee deliberately violated its rules, the employer must demonstrate that the "employee acted deliberately, violating a known rule." Wulf v. Sun Valley Co., 127 Idaho 71, 76, 896 P.2d 979, 983 (1995.) Because there is no evidence in this record of a known rule specifically governing the conduct at issue, Employer cannot establish misconduct under the "violation of the employer's rules" prong of the test. Mussman v. Kootenai County, 150 Idaho 68, 76, 244 P.3d 212, 220. The analysis continues with the "standards of behavior."

Under the "standards of behavior" analysis, the employer must show by a preponderance of the evidence that it communicated its expectations to the claimant, or that its expectations "flowed normally" from the employment relationship. Further, the employer must demonstrate that those expectations were objectively reasonable as applied to the claimant. "The first prong of this test speaks only to what the employer subjectively expected from the employee, while the second prong considers whether the employer's expectations are reasonable." Mussman, at 72, 344 P.3d. 212, at 216. An "employer's expectations are ordinarily reasonable only where they have been communicated to the employee." Folks v. Moscow School District No. 281, 129 Idaho 833, 838, 933 P.2d 642, 647 (1997).

Notably, there is no requirement that the employer must demonstrate that the employee's behavior was subjectively willful, intentional, or deliberate in his or her disregard of the employer's expectations. Welch v. Cowles Publishing Co., 127 Idaho 361, 364, 900 P.2d 1372, 1375 (1995). Because the employer need not demonstrate some form of "malice" on the part of the employee, what communication did or did not take place between the employer and the

claimant becomes a key element in these cases. An employee can only be held accountable for breaching those expectations that he or she understood, explicitly or implicitly, and was capable of satisfying. Puckett v. Idaho Department of Corrections, 107 Idaho 1022, 695 P.2d 407 (1985).

Claimant's job performance deteriorated starting in early 2014. Claimant attributes her problems to the constant changes in policies and procedures under the new management. Claimant maintains that she did not know from one shift to the next what was expected. Claimant argues that the policy and procedure manual at the front desk was not kept up-to-date. Moreover, she had problems with the new system for reconciling the credit card transactions. She was never told when the password changed. Because of problems with the system, instructions about whether to access it through the Internet or directly changed regularly. Claimant maintains that she did the best she could to do her job in the midst of all of the turmoil. (Audio Recording.)

Claimant explained that she was not comfortable with Schoner as a manager and felt that she was under constant scrutiny. Claimant felt "picked on" and that made matters worse. (Audio Recording.) Because of the scrutiny she was under, Claimant did not feel comfortable going into a "private" office to retrieve coffee beans, as Hastings directed, even with the permission of her supervisor. (Audio Recording.) Claimant denies that she slept on the job or watched television. When she was allegedly away from her area, she was performing a security walk, part of her job duties. (Audio Recording.) In short, Claimant admits that she erred when she refunded a guest's deposit without checking the room, but performed the rest of her job duties to the best of her abilities, given the constant change and lack of support she received from management. (Audio Recording.)

The evidence in this record establishes that Claimant had demonstrated her abilities to perform the duties of a night auditor. There is no substantial evidence to support Employer's

allegations that Claimant was sleeping on the job or was watching television. However, Employer has demonstrated that Claimant refunded a deposit without checking a room, failed to reconcile the credit card receipts as part of her audit duties, and refused to enter an office to retrieve the coffee beans necessary to set up coffee.

Claimant's failure to check a room before refunding the deposit to the guest clearly fell below Employer's communicated expectations. When Claimant gave up on reconciling the credit card receipts because she could not get the password to work, Claimant's behavior also fell below Employer's expectations that she would fulfill her core job duties. Claimant contends that there was no one she could call for help. (Audio Recording.) However, Claimant's admissions that she was not comfortable with the new management and felt that she was under intense scrutiny indicates that it was not so much a case of help not being available as it was Claimant's discomfort in seeking it out.

When Hastings directed Claimant to the office to retrieve the coffee beans, Hastings issued Claimant a reasonable directive. Other than Claimant's fear that she would be reprimanded for entering a private office, nothing in this record explains why Claimant refused to follow the instruction Hastings issued. Claimant's general anxiety did not render the directive so unreasonable that Claimant could refuse it without consequence. Claimant's refusal to enter the office to get the coffee beans so that she could finish one of her job duties fell below a standard of behavior Employer was entitled to expect.

Claimant knew or should have known that the deterioration in her job performance had placed her job in jeopardy. Claimant's hours were cut a few weeks before her discharge due to her job performance, but Claimant did not improve. Instead, the errors continued. Nothing in this record explains Claimant's behavior other than Claimant's discomfort with Schoner and Hastings as managers. The evidence in this record establishes that Claimant was capable of

performing her job duties to Employer's expectations. The insubordination and failure to perform those job duties fell below Employer's expectations and resulted in her discharge. Therefore, Employer has demonstrated that Claimant was discharged for employment-related misconduct. Claimant is ineligible for unemployment benefits.

Chargeability of Employer's Account

Pursuant to Idaho Code § 72-1351(2)(a), an employer's experience rated account is chargeable for benefits paid to a claimant who is discharged for reasons other than misconduct connected with employment or quits with good cause connected with employment. In this case, Employer paid the most wages to Claimant during the last four base quarters. (Exhibit: p. 18.) Because Employer discharged Claimant for employment-related misconduct, Employer's account is not chargeable for experience rating purposes.

CONCLUSIONS OF LAW

I

Employer discharged Claimant for employment-related misconduct.

II

Employer's account is not chargeable for experience rating purposes.

ORDER

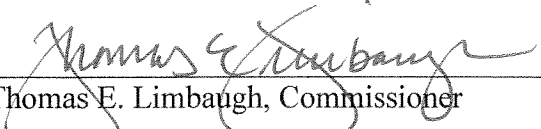
Based on the foregoing analysis, the Decision of the Appeals Examiner is REVERSED. Claimant is ineligible for unemployment benefits. Employer's account is not chargeable for experience rating purposes. This is a final order under Idaho Code § 72-1368(7).

DATED this 11th day of December, 2014.


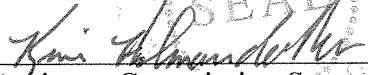
INDUSTRIAL COMMISSION


Thomas P. Baskin, Chairman


R.D. Maynard, Commissioner


Thomas E. Limbaugh, Commissioner

ATTEST:



Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of December, 2014, a true and correct copy of the foregoing **DECISION AND ORDER** was served by regular United States mail upon each of the following:

BETTY S HARPER
3689 W CHUCKAR LOOP APT 202
POST FALLS ID 83854-9337

PHED INVESTMENTS LTD
DBA SILVERSTONE INN AND SUITES
3647 W 5TH AVE
POST FALLS ID 83854

DEPUTY ATTORNEY GENERAL
IDAHO DEPARTMENT OF LABOR
STATEHOUSE MAIL
317 W MAIN STREET
BOISE ID 83735

kh



Betty Harper

Claimant

v.

PHED Investments. LTD.DBA
Silverstone Inn and Suites
Employer
And Idaho Department of Labor

IDOL #5886-2014
Decision and Order
Filed DEC 11, 2014

December 29, 2014

Supreme Court No. 42864

RECEIVED
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2015 JAN - 2 A 11:04

RE: OFFICIAL REBUTTAL / PROTEST of REVERSED ruling
by Appeals Examiner with the Idaho Department of Labor ruling Claimant eligibility
for unemployment benefits paid to Betty Harper.

+Now comes an Appeal submitted to Industrial Commission and the
The letter dated Dec 11 states that the Idaho Department of Labor Appeals
Examiner has concluded that now 1) Employer discharged Claimant for reasons
other than misconduct connected with employment and 2) Employers account is
chargeable for experience rating?

To my knowledge there was no new 'evidence' submitted for a reversed ruling/
Under what circumstances can a decision and order be can a REVERSED?

Now comes a claim that Employer terminated Betty Harper for reasons other than
the first stated reasons?

I submit that the REVERSED ruling be APPEALED and reviewed by a higher court/

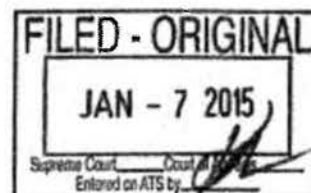
I look forward to a response and next steps to re evaluate this REVERSED decision.

Regards,

Betty Harper

Betty Harper
3689 W Chuckar Cir #202
Post Falls, ID 83854

email - *bettyhrhr@gmail.com*



Betty S. Harper
3689 W Chubb Cr Apt 202
Post Falls, ID 83854



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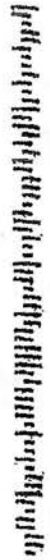
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State of Idaho
Industrial Commission
100 So. Clearwater Ln.
P.O. Box 83720
Boise, ID. 83720-0041

#2 Kim Hammond

B3720\$0041



SPOKANE WA 99000
50 DEC 2014 PM 2 T



BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

Supreme Court No. 42864
SUPREME COURT NO. _____

BETTY S. HARPER,

Claimant-Appellant,

v.

PHED INVESTMENTS, LTD., IDAHO
DEPARTMENT OF LABOR, Employer, and
IDAHO DEPARTMENT OF LABOR,

Defendants-Respondents.

CERTIFICATE OF APPEAL
OF BETTY S. HARPER

Appeal From: Industrial Commission Chairman Thomas P. Baskin presiding.

Case Number: IDOL # 5886-2014

Order Appealed from: DECISION AND ORDER ENTERED DECEMBER 11, 2014

Representative/Claimant: BETTY S HARPER
3689 W CHUCKAR LOOP APT 202
POST FALLS ID 83854-9337

Representatives/Employers: PHED INVESTMENTS LTD
DBA SILVERSTONE INN AND SUITES
3647 W 5TH AVE
POST FALLS ID 83854

Representative/IDOL: TRACEY K ROLFSEN
IDAHO DEPARTMENT OF LABOR
317 W MAIN ST
BOISE ID 83735

Appealed By: BETTY S. HARPER, Claimant/Appellant

CERTIFICATE OF APPEAL OF BETTY S. HARPER - 1

JAN - 7 2015

Appealed Against: PHED INVESTMENTS LTD
DBA SILVERSTONE INN AND SUITES/Respondent

Notice of Appeal Filed: January 2, 2015

Appellate Fee Paid: Awaiting Payment from Claimant.

Name of Reporter: M DEAN WILLIS
PO BOX 1241
EAGLE ID 83616

Transcript: Transcript will be ordered upon payment of fees.

Dated: January 6, 2015



Kim Helmandollar, Assistant Commission Secretary




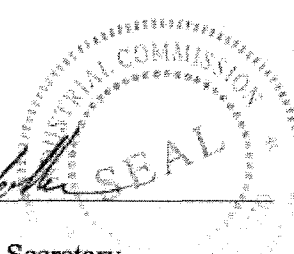
CERTIFICATE OF APPEAL OF BETTY S. HARPER - 2

CERTIFICATION

I, Kim Helmandollar, the undersigned Assistant Commission Secretary of the Industrial Commission of the State of Idaho, hereby CERTIFY that the foregoing is a true and correct photocopy of the Notice of Appeal filed August 26, 2014; Decision and Order filed December 11, 2014; and the whole thereof, Docket Number 5886-2014 for Betty S. Harper.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Commission this 6th day of January, 2015.


Kim Helmandollar
Assistant Commission Secretary



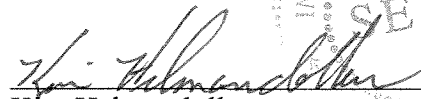
CERTIFICATION – BETTY S. HARPER

CERTIFICATION OF RECORD

I, Kim Helmandollar, the undersigned Assistant Commission Secretary of the Industrial Commission, do hereby certify that the foregoing record contains true and correct copies of all pleadings, documents, and papers designated to be included in the Agency's Record on appeal by Rule 28(3) of the Idaho Appellate Rules and by the Notice of Appeal, pursuant to the provisions of Rule 28(b).

I further certify that all exhibits admitted in this proceeding are correctly listed in the List of Exhibits (i). Said exhibits will be lodged with the Supreme Court after the Record is settled.

DATED this 12th day of March, 2015.


Kim Helmandollar
Assistant Commission Secretary



CERTIFICATION OF RECORD – BETTY S. HARPER

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

BETTY S. HARPER

SSN: [REDACTED]

Claimant,

v.

PHED INVESTMENTS, LTD. D/B/A
SILVERSTONE INN AND SUITES,

Employer,

and

IDAHO DEPARTMENT OF LABOR,

Respondent.

SUPREME COURT NO. 42864

NOTICE OF COMPLETION

TO: Stephen W. Kenyon, Clerk of the Courts; and
Betty S. Harper, Claimant/Appellant; and
PHED Investments, Ltd. d/b/a Silverstone Inn and Suites, Employer/Respondent; and
Tracey K. Rolfsen, Esq., for Idaho Department of Labor/Respondent.

YOU ARE HEREBY NOTIFIED that the Agency's Record was completed on this date,
and, pursuant to Rule 24(a) and Rule 27(a), Idaho Appellate Rules, copies of the same have been
served by regular U.S. mail upon each of the following:

Address For Claimant/Appellant

BETTY S HARPER
3689 W CHUCKAR LOOP APT 202
POST FALLS ID 83854-9337

Address For Employers/Respondents

PHED INVESTMENTS LTD
DBA SILVERSTONE INN AND SUITES
3647 W 5TH AVE
POST FALLS ID 83854

NOTICE OF COMPLETION – BETTY S. HARPER - 1

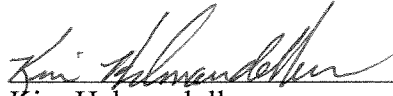
Address For Respondent

TRACEY K ROLFSEN
DEPUTY ATTORNEY GENERAL
317 W MAIN STREET
BOISE ID 83735

You are further notified that, pursuant to Rule 29(a), Idaho Appellate Rules, all parties have *twenty-eight days* from this date in which to file objections to the Record, including requests for corrections, additions or deletions. In the event no objections to the Agency's Record are filed *within the twenty-eight day period*, the Transcript and Record shall be deemed settled.

DATED at Boise, Idaho this 12th day of March, 2015.

INDUSTRIAL COMMISSION



Kim Helmandollar
Assistant Commission Secretary